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No. 142

In the

Supreme Court

of the United States

October Term, 1941

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation, *Petitioner*,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE, GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK CURTIS, LEROY CHENOWITH, WALTER WEAVER, O. TANNER, O. H. BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS, ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEECROFT, HENRY BOYE, WILLIS KOOGLER, LEO LYSTER, LYLE LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A. PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE CHASE and PACIFIC COAST FISHERMEN'S UNION, its officers and members, *Respondents*.

Petitioner's Reply Brief

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REFERENCE TO RESPONDENTS' CASES

Respondents, on page 7 of their brief state that the decision of the Court of Appeals in the case at bar, decided a question which has heretofore been settled by this court and there is no conflict with applicable deci-

sions of this court and in support of such contention respondents cite the following cases:

Lauf v. E. G. Shinner & Co., 303 U. S. 323.

New Negro Alliance v. Grocery Co., 303 U. S. 552.

United States v. Hutcheson, et al, 61 Supreme Court Reporter 463.

Milk Wagon Drivers' Union, et al. v. Lake Valley Farm Products, Inc., et al., 311 U. S. 91.

These cases cited by respondents have no application to the record of the case at bar.

The Lauf case involved a controversy wherein a labor union was carrying on a picketing campaign in an endeavor to force the employees of an employer to leave their own union and join the union of the demanding organization.

The court held such controversy involved a labor dispute under the laws of Wisconsin, the state in which the controversy arose and as defined by the Federal Norris-La Guardia Act and because thereof the Federal Courts were without jurisdiction to issue an injunction.

The case at bar does not involve a labor union or organization, nor does it involve a labor dispute.

The only question involved in the case at bar is the legal effect of an agreement creating and maintaining

a monopoly and fixing prices of commodities moving in interstate and foreign commerce.

The New Negro Alliance case involved a controversy wherein an organization composed of colored persons were demanding an employer to engage and employ colored persons in managerial and sales positions in the new and various other stores of such employer.

This court held such controversy to be a labor dispute within the meaning of the Norris-LaGuardia Act.

The case has no application to the record of the case at bar.

The opinion of the Court of Appeals in the case at bar says:

> "New Negro Alliance v. Grocery Co. supra, is distinguishable on its facts, there the controversy was over the race of the people whom the company might or did employ.
>
> "Here, no such controversy was present, because appellee did not 'employ' persons as that word is used in the strict sense." (R. 152 Appendix P. 6 to Petition for Writ of Certiorari)

In Milk Wagon Drivers' Union case, this court found that the persons classified as "vendors," "were actually regarded as employees of the plaintiff dairies." (311 U. S. 91, 98)

This court further said (311 U. S. 91, 98, 99, 100):

> "Whether rightly or wrongly, the defendant union believed that the 'vendor system' was a scheme or device utilized for the purpose of escaping the payment of union wages and the assumption of working conditions commensurate with those imposed under union standards. * * *
>
> "Nor does the controversy cease to be a labor dispute, as the Circuit Court of Appeals thought, because the plaintiff dairies 'employes' became organized. This merely transformed the defendant's activities from an effort to organize non-union men to a conflict which included a controversy between two unions. A controversy 'concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment' is expressly included within the definition of a labor dispute in the Norris-La Guardia Act."

The record in the Drivers' Union case is not in any way comparable to the record in the case at bar.

The Hutcheson case, in the first paragraph of its opinion, presents the issue that was involved in that case, stated as follows: (312 U. S. 219, 227)

> "Whether the use of conventional peaceful activities by a union in controversy with a rival union over certain jobs is a violation of the Sherman Law, Act of July 2, 1890, 26 Stat., 209, as amended, 15 U.S.C., Section 1, is the question. It is sharply presented in this case because it arises in a criminal prosecution. Concededly an injunction either at the suit of the government or the employer could not issue."

Respondents' can find neither aid nor sanction in the Hutcheson case where it is to be noted on page 282 of the majority opinion, the court observed:

> "So long as a union acts in its self-interest and does not combine with non-labor groups, (Citing in note 8 U.S. vs. Brims 272 U.S. 549) the licit and the illicit under section 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

And again the majority opinion on page 233 further stated:

> "Clearly, then, the facts here charged constitute lawful conduct under the Clayton Act unless the defendants cannot invoke that Act because outsiders to the immediate dispute also shared in the conduct."

The Hutcheson case has been cited as authority that where labor unions combine upon objects outside of the field of labor relations, "the area of economic conflict". (Hutcheson case, 61 S. Ct. at page 465), or "combine with non-labor groups" (page 466) to effect the objects at which the Anti-Trust laws are directed, then, and then only, do they become amenable to the provisions thereof.

International Association, etc. v. Pauly Jail Bldg. Co., 118 Fed. 2nd. 615, 621. (Concurring opinion —Judge Woodrough)

Manaka v. Monterey Sardine Industries, Inc., (D. C. N. D. California)—Decided by Judge Fee Oct. 24, 1941—not yet published.

U. S. v. Central Supply Assoc., (D. C. N. D. Ohio, E. D.) 40 Fed. Supp. 964, 965, Adv. Sheet No. 7.

U. S. v. Assoc. Plumb. & H. Merchants, 38 Fed. Supp. 769, 770. (D. C. W. D. Washington, N.D.)

Respondents, exclusive of Charles Marks and Clyde Chase and Pacific Coast Fishermen's Union, are fishermen, who are directly employed by no one, but are producers and independent contrators, who fish when and where they choose and dispose of their fish to whomever they select, limited only by voluntary agreement among themselves as member of the respondent, Pacific Coast Fishermen's Union. (Finding of Fact II, R. 55-56).

The respondents Charles Marks and Clyde Chase are not fishermen, and are not members of Pacific Coast Fishermen's Union, but each is a fish buyer operating under an exclusive contract with the Pacific Coast Fishermen's Union, whereby they are obligated to purchase no fish from anyone not a member of said union. (Finding of Fact XVIII, R. 71-72-73-74).

No labor dispute is involved herein. (Findings of Fact II R 55-56 XIV, R 65-66 XX, XXI, XXII R 75-76)

QUESTION PRESENTED

The question presented herein is set forth in the petition for writ of Certiorari on pages 3 to 5 thereof.

PACIFIC COAST FISHERMEN'S UNION CREATED AND MAINTAINED A MONOPOLY AND FIXED THE PRICES FOR THE PRODUCTS IN THE FISH INDUSTRY MOVING IN INTERSTATE AND FOREIGN COMMERCE.

Findings of Fact II (R 55-56) VI, VII (R 58-60) and X to including XXXVII (XX) (R 62-88)

Such monopoly and price fixing arrangement is in violation of the Sherman Act and its amendments.

U. S. v. Socony-Vacuum Oil Co., 310 U. S. 150, 212-224.

Apex Hosiery Co. v. Leader, 310 U. S. 469, 492-493, 500.

and cases cited on pages 5-6 of Petitioner's Brief in support of Writ of Certiorari.

The Judgment and Decree of the Circuit Court of Appeals should be reversed and the Judgment and Decree of the District Court affirmed.

Respectfully submitted,

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